

# HOUSE BILL 194

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CF 11r2359

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By: **Delegates B. Robinson, Braveboy, Burns, Cardin, Frush, Glenn, Gutierrez, Haynes, Hixson, Proctor, V. Turner, and Washington**  
Introduced and read first time: January 28, 2011  
Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Minority Business Enterprise Participation – Contracts, Debarment, and**  
3 **Termination Extension**

4 FOR the purpose of requiring each State procurement contract to include a certain  
5 clause that requires the contractor to meet a certain degree of minority business  
6 enterprise participation under certain circumstances; authorizing the Board of  
7 Public Works to debar a person from entering into a contract with the State for  
8 a certain period of time if the Board finds that the person knowingly violated a  
9 contract clause requiring a certain degree of minority business enterprise  
10 participation under certain circumstances; continuing until a certain date  
11 certain provisions of the State Procurement Law relating to procurement from  
12 minority businesses; requiring a certain study and a final report on the study by  
13 a certain date; providing for the application of certain provisions of this Act;  
14 providing for the effective dates of this Act; and generally relating to minority  
15 business enterprise participation.

16 BY repealing and reenacting, with amendments,  
17 Article – State Finance and Procurement  
18 Section 13–218, 14–309, and 16–203(d)  
19 Annotated Code of Maryland  
20 (2009 Replacement Volume and 2010 Supplement)

21 BY repealing and reenacting, without amendments,  
22 Article – State Finance and Procurement  
23 Section 14–303(a)(1)(i) and (b)(2) and (8)  
24 Annotated Code of Maryland  
25 (2009 Replacement Volume and 2010 Supplement)

26 BY repealing and reenacting, with amendments,

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.  
[Brackets] indicate matter deleted from existing law.



1 Chapter 116 of the Acts of the General Assembly of 1995, as amended by  
2 Chapters 495 and 496 of the Acts of the General Assembly of 2000,  
3 Chapter 339 of the Acts of the General Assembly of 2001, and Chapter  
4 359 of the Acts of the General Assembly of 2006  
5 Section 2

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
7 MARYLAND, That the Laws of Maryland read as follows:

8 **Article – State Finance and Procurement**

9 13–218.

10 (a) Each procurement contract shall include clauses covering:

11 (1) termination for default;

12 (2) termination wholly or partly by the State for its convenience if the  
13 head of the primary procurement unit determines that termination is appropriate;

14 (3) variations that occur between estimated and actual quantities of  
15 work in a procurement contract;

16 (4) liquidated damages, as appropriate;

17 (5) specified excuses for nonperformance;

18 (6) except for real property leases, the unilateral right of the State to  
19 order in writing:

20 (i) changes in the work, if the changes are within the scope of  
21 the procurement contract; and

22 (ii) a temporary stop or delay in performance;

23 (7) the obligation of the contractor to comply with the political  
24 contribution reporting requirements under Title 14 of the Election Law Article, to  
25 which the contractor may be subject as required under § 17–402 of this article; and

26 (8) nonvisual access for information technology as required under §  
27 3A–312 of this article.

28 (b) In addition to the clauses required under subsection (a) of this section, a  
29 procurement contract for construction shall include:

30 (1) a clause providing for contract modification if the condition of a site  
31 differs from the condition described in the specifications; and

1           (2) a clause covering the requirements for notice of contract claims,  
2 submission of contract claims, and resolution of contract claims under § 15–219 of this  
3 article.

4           (c) Each procurement contract shall include a clause that gives to the parties  
5 notice that preexisting regulations apply to the procurement contract in accordance  
6 with § 11–206 of this article.

7           (d) At any time after the parties enter into a procurement contract they may  
8 include additional clauses in the procurement contract, by consent, without  
9 consideration.

10           (e) A clause required under this section for contract modification of or change  
11 orders to a procurement contract for construction shall:

12           (1) make each contract modification or change order that affects the  
13 price of the procurement contract subject to:

14                   (i) prior written approval from the unit and any other person  
15 responsible for the procurement contract; and

16                   (ii) prior certification by the fiscal authority responsible for the  
17 unit about:

18                           1. the availability of money; and

19                           2. the effect of the contract modification or change order  
20 on the project budget or the total construction cost; and

21           (2) prohibit the contract modification or change order if the  
22 certification by the fiscal authority discloses that the contract modification or change  
23 order will increase the cost beyond budgeted and available money, unless:

24                   (i) sufficient additional money is made available; or

25                   (ii) the scope of the project is adjusted to allow completion  
26 within the project budget.

27           **(F) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, EACH**  
28 **PROCUREMENT CONTRACT SHALL INCLUDE A CLAUSE THAT REQUIRES THE**  
29 **CONTRACTOR TO MEET THE EXPECTED DEGREE OF MINORITY BUSINESS**  
30 **ENTERPRISE PARTICIPATION AS SET FORTH IN THE AGENCY SOLICITATION.**

31           **(2) THIS SUBSECTION DOES NOT APPLY TO MINORITY BUSINESS**  
32 **ENTERPRISE PARTICIPATION CONTRACT OBLIGATIONS THAT ARE WAIVED IN**  
33 **ACCORDANCE WITH REGULATIONS ADOPTED BY THE BOARD.**

1 14–303.

2 (a) (1) (i) In accordance with Title 10, Subtitle 1 of the State  
3 Government Article, the Board shall adopt regulations consistent with the purposes of  
4 this Division II to carry out the requirements of this subtitle.

5 (b) These regulations shall include:

6 (2) a requirement that the solicitation document accompanying each  
7 solicitation set forth the expected degree of minority business enterprise participation  
8 based, in part, on:

9 (i) the potential subcontract opportunities available in the  
10 prime procurement contract; and

11 (ii) the availability of certified minority business enterprises to  
12 respond competitively to the potential subcontract opportunities;

13 (8) consistent with § 14–302(a)(6) of this subtitle, provisions relating  
14 to any circumstances under which a unit may waive obligations of the contractor  
15 relating to minority business enterprise participation;

16 16–203.

17 (d) A person may be debarred from entering into a contract with the State:

18 (1) if the Board finds that the person was established or operates in a  
19 manner designed to evade the application of this title or to defeat the purpose of this  
20 title;

21 (2) if the person is a successor, assignee, subsidiary, or affiliate of a  
22 person who is debarred or suspended;

23 (3) for one of the following violations of a contract provision if the  
24 Board believes it to be serious enough to justify debarment:

25 (i) the deliberate failure, without good cause, to perform in  
26 accordance with the specifications, or within the time limit, provided in a contract; or

27 (ii) within the preceding 5 years, the failure to perform or of  
28 unsatisfactory performance in accordance with the terms of one or more contracts,  
29 unless the failure to perform or unsatisfactory performance was caused by acts beyond  
30 the control of the person;

31 (4) if the person is a competing contractor, or any officer, employee,  
32 representative, agent, or consultant of any competing contractor who violates § 13–211  
33 of this article; [or]

1           **(5) FOR A PERIOD NOT EXCEEDING 1 YEAR, IF THE BOARD FINDS**  
2 **THAT THE PERSON KNOWINGLY VIOLATED A CONTRACT CLAUSE UNDER §**  
3 **13-218(F) OF THIS ARTICLE REQUIRING A CONTRACTOR, ABSENT A WAIVER, TO**  
4 **MEET THE EXPECTED DEGREE OF MINORITY BUSINESS ENTERPRISE**  
5 **PARTICIPATION; OR**

6           **[(5)] (6)** for any other cause that the Board determines to be so  
7 serious as to affect the integrity of the procurement process.

8           SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
9 read as follows:

10                               **Article – State Finance and Procurement**

11   14-309.

12           The provisions of §§ 14-301 through 14-305 of this subtitle, and any regulations  
13 adopted under those sections, shall be of no effect and may not be enforced after July  
14 1, **[2011] 2013**.

15           **Chapter 116 of the Acts of 1995, as amended by Chapters 495 and 496 of the**  
16 **Acts of 2000, Chapter 339 of the Acts of 2001, and Chapter 359 of the Acts of**  
17 **2006**

18           SECTION 2. AND BE IT FURTHER ENACTED, That the Certification Agency,  
19 in consultation with the General Assembly and the Office of the Attorney General,  
20 shall initiate a study of the Minority Business Enterprise Program to evaluate the  
21 Program's continued compliance with the requirements of the Croson decision and any  
22 subsequent federal or constitutional requirements. In preparation for the study, the  
23 Board of Public Works may adopt regulations authorizing a unit of State government  
24 to require bidders and offerors to submit information necessary for the conduct of the  
25 study. The Board of Public Works may designate that certain information received in  
26 accordance with regulations adopted under this section shall be confidential.  
27 Notwithstanding that certain information may be designated by the Board of Public  
28 Works as confidential, the certification agency may provide the information to any  
29 person that is under contract with the certification agency to assist in conducting the  
30 study. The study shall also evaluate race neutral programs and other methods that  
31 can be used to address the needs of minority businesses. The final report on the study  
32 shall be submitted to the Legislative Policy Committee of the General Assembly prior  
33 to September 30, **[2010] 2012**, so that the General Assembly may review the report  
34 prior to the **[2011] 2013** Session.

35           SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall  
36 take effect October 1, 2011.

1           SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in  
2 Section 3 of this Act, this Act shall take effect July 1, 2011.